United Nations AT/DEC/1130

Administrative Tribunal

Distr.: Limited
30 September 2003
Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1130

Case No. 1229: HANNIBAL Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Spyridon Flogaitis; Ms. Brigitte Stern;

Whereas at the request of Jens Ulrich Hannibal, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 November 2001 the time limit for the filing of an application with the Tribunal;

Whereas, on 2 November 2001, the Applicant filed an Application, requesting the Tribunal, inter alia:

> "2. ... *to find*:
>
> (a) [that] the Applicant was issued a valid three-year contract extension from 29 January 1999 to 28 January 2002;
>
> (b) [that the request for administrative review] to the Secretary-General and the [appeal to the] Joint Appeals Board [(JAB)]... [were] timely.

3. ... [and] *to order*:

(a) the Secretary-General to pay the Applicant all salary and other emoluments due for the period 29 January 2000 to 28 January 2002;

(b) in the alternative, to order the [JAB] to consider the appeal ... on the merits."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2002;

Whereas the Respondent filed his Answer on 19 March 2002;

Whereas the facts in the case are as follows:

The Applicant joined the United Nations Office for Drug Control and Crime Prevention (UNDCP) Country Office in Myanmar, on a two-year Project Personnel appointment as Director Designate, at the L-5 level, on 29 January 1996. Due to problems in obtaining formal clearance from the Government of Myanmar, the Applicant was temporarily assigned to UNDCP headquarters in Vienna. Effective 4 August 1997, the Applicant was reassigned as Senior Programme Coordinator at the UNDCP Liaison Office, Hanoi, Viet Nam. The Applicant's appointment was subsequently extended for one year, with a recommendation that "if the project post in Viet Nam is regularized then he should be offered a 3-year contract, if not it should be a one-year extension".

In early 1998, the UNDCP Liaison Office in Hanoi was upgraded to a country office and, effective 1 April, the Applicant's appointment was converted to a fixed-term appointment under the 100 series, with the functional title of UNDCP Representative in Viet Nam, at the P-5 level. This appointment was to expire on 28 January 1999. On 18 March 1998, the Chief, Operations Branch, UNDCP, Vienna, recommended a one-year extension of the Applicant's appointment. On 3 April 1998, Human Resources Management Section (HRMS) instead prepared and sent to the Applicant a three-year letter of appointment, which the Applicant apparently signed and returned to HRMS. On the same day, HRMS issued a personnel action form, extending the Applicant's appointment through 28 January 2002.

In early May 1998, HRMS informed the Applicant by telephone that a mistake had been made, and that the letter of appointment should have been for one year only, i.e., until 28 January 2000. A replacement letter of appointment for one year

was prepared by HRMS and sent to the Applicant on 6 May 1998, and, on the same day a personnel action form to this effect was issued. The Applicant signed and returned the one-year letter of appointment on 29 January 1999.

On 16 June 1999, the Chief, Operations Branch, UNDCP, recommended that the Applicant's appointment not be extended beyond its expiration date of 28 January 2000.

On 8 October 1999, the Applicant was advised that no further extension of his appointment was foreseen, and on 4 November he received his separation instructions. The Applicant separated from service on 28 January 2000.

On 6 June 2000, the Applicant requested the Secretary-General to review the decision to replace the three-year fixed-term letter of appointment with a one-year fixed-term appointment, or, alternatively, the decision not to renew his contract beyond 28 January 2000.

On 27 October 2000, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 16 may 2001. Its findings read, in part, as follows:

> **"Findings on Receivability**
>
> ...
>
> 11. ... the administrative decision to withdraw and deny validity to the three-year letter of appointment had been notified in writing to the Appellant in May 1998 and ... the consequences of that decision had been fully drawn and become manifest in October and November 1999. The Panel considers that a request of administrative review should have intervened within two months of the various above-mentioned junctures, and that the Appellant's request filed on 6 June 2000 is therefore not receivable.
>
> *Non-Renewal of Contract*
>
> 12. The Panel notes ... that the Appellant received notice on 8 October 1999 that UNDCP did not foresee any further extension of his appointment beyond 28 January 2000. He received instructions for his separation on 4 November 1999 ... The filing of a request for administrative review of the decision not to renew the Appellant's contract is therefore also beyond the time-limits set by staff rule 111.2(a).
>
> 13. The Panel takes note of the Appellant's allegations that verbal promises had kept him under the impression that he would obtain other employment opportunities with UNDCP, hence the delay in filing the request for administrative review ...

> 14. The Panel notes, however, that the Appellant's allegations relate to verbal statements and that the process of administrative review and appeal revolves around the decisions notified to staff members in writing (staff rule 111.2(a)(i).
> ...
> 15. While the Panel feels strongly that, in general, appellants should have their case heard on the merits whenever possible and is disturbed by the unprofessional manner in which the Appellant's letters of appointment were processed by the Respondent, the Panel has little choice but to declare the appeal not receivable. ..."

On 6 July 2001, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General accepted the JAB's finding and conclusion and had decided to take no further action on his appeal.

On 2 November 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant had a valid three-year contract until 28 January 2002; the Applicant signed the one-year letter of appointment under duress.

2. The contract, which had been signed by both parties, could not be withdrawn unilaterally.

3. The Application is not time-barred. The Applicant had a valid contract which the Respondent refused to recognize. Each month there is a separate administrative decision, refusing to pay the salary that is due. Each such administrative decision gives rise to the possibility of appeal. Thus, the request for administrative review, filed on 6 June 2000, was within the prescribed time-limits.

Whereas the Respondent's principal contentions are:

1. The Applicant's appeal is time-barred.

2. The lack of exceptional circumstances precludes the waiving of the time limits under staff rule 111.2(a).

3. Even if considered on the merits, the Applicant's position is untenable.

The Tribunal, having deliberated from 25 June to 25 July 2003, now pronounces the following Judgement:

I. The Applicant was serving on a fixed-term appointment as the UNDCP Representative in Viet Nam when, on 3 April 1998, he was informed by HRMS that his appointment would be extended for a further three years, through 28 January 2002. The Applicant signed the letter of appointment and returned it to HRMS. In early May 1998, the Applicant was notified by HRMS that the said letter of appointment was erroneously issued and that an amended letter of appointment, reflecting the extension of his appointment for a period of one year, through 28 January 2000, had been sent to him for signature. The Tribunal notes that this extension was in line with the recommendation made on 19 March 1998 by the Chief, Operations Branch, UNDCP. The replacement letter of appointment was sent to the Applicant on 6 May 1998, and was returned duly signed by the Applicant on 29 January 1999. On 8 October 1999, the Applicant was informed that his contract would not be extended beyond 28 January 2000.

On 6 June 2000, the Applicant wrote to the Secretary-General requesting administrative review of the decision to replace the three-year-term letter of appointment with a letter of appointment for one-year.

II. In its jurisprudence, the Tribunal has consistently reaffirmed the importance of observing the time limits prescribed for the various stages of the administrative review process, as well as for other remedies of administrative character. These time limits are of utmost importance for ensuring the well functioning of any administration. They are therefore of public interest and must be interpreted restrictively. Recently, in Judgement No. 1046, *Diaz de Wessely* (2002), the Tribunal stated:

> "In the Tribunal's view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang

like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past: 'Unless such staff rules [on timeliness] are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is of vital importance to its proper functioning' (see Judgement No. 579, *Tarjouman* (1992), para. XVII)".

III. Staff rule 111.2 provides, inter alia:

"(a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

...

(f) An appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal."

Furthermore, Article 7 of the Tribunal's Statute provides, inter alia:

"An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General ..."

Accordingly, for the Applicant's appeal to be receivable, his request for administrative review should have been made within two months from the day the alleged erroneous administrative action occurred. The decision withdrawing the three-year letter of appointment dates back to May 1998; the notice of non-renewal of the Applicant's contract was made in October 1999 and in November 1999 the Applicant received his separation instructions. The Applicant's request of June 2000 exceeds the two months' time limit even if counted from the last mentioned date. Moreover, the Applicant did not present any exceptional circumstances warranting a waiver of the time limits.

The Tribunal therefore finds that the Application is time barred and thus not receivable.

IV. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Julio **Barboza**
President

Spyridon **Flogaitis**
Member

Brigitte **Stern**
Member

Geneva, 25 July 2003

Maritza **Struyvenberg**
Executive Secretary

/HANNIBAL